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MAILED

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OFFICE OF PETITIONS

In re Application of :
Baxter et al. :
Application No. 10/591,157 : ON APPLICATION FOR
Filed: October 6, 2006 : PATENT TERM ADJUSTMENT
Atty Docket No. :
GJE-7697 :

This is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.705(b)," filed on November 11, 2009. Applicants request that the patent term adjustment be increased from 300 days to 336 days.

The application for patent term adjustment is **DISMISSED**.

On August 11, 2009, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 300 days. This application for patent term adjustment was timely filed with or prior to payment of the issue fee.¹

Applicants assert entitlement to an additional period of adjustment of 36 days for Office delay pursuant to 37 CFR 1.702(a)(1).

Applicants assert, in pertinent part:

A review of the PAIR record shows that the Patent Office apparently calculated the "B-delay" in the application based upon the October 6, 2006 date. However, a review of the relevant statutes and regulations shows that the actual date to be used with

¹ PALM records indicate that the issue fee was also paid on November 11, 2009.

regard to the calculation of B-delay time-limits is the date on which national filing "commenced" pursuant to 35 U.S.C. §§ 371(b) and (f). For the subject application, the date on which national filing "commenced" was August 30, 2006.

Based upon the filing date of August 30, 2006, the applicants should have received a first action in this application, pursuant to 35 U.S.C. 154(b)(1)(1), no later than October 30, 2007. However, the first Office Action in this application was not mailed until September 30, 2008. This constituted a 335 day Patent Office delay. A review of the PAIR record shows that the Patent Office delay was determined to be only 299 days.

Applicants are incorrect. 37 CFR 1.703(a)(1) states that the period of adjustment for Office delay is the number of days, if any, in the period beginning on the day after the date that is fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first. The fourteen month period under § 1.703(a)(1) is calculated from the date of the fulfillment of requirements of 35 U.S.C. 371, not from the date of commencement of the national stage under 35 U.S.C. 371(b) or (f).

A review of the record reveals that the application fulfilled the requirements of 35 U.S.C. 371 on October 6, 2006: the date an oath or declaration pursuant 35 U.S.C. 371(c)(4) was filed. Accordingly, the period of adjustment for Office delay is the period beginning on December 7, 2007, the day after the date fourteen months from the date of fulfillment of requirements under 35 U.S.C. 371, and ending on September 30, 2008, the date of the mailing of the first Office action, or 299 days.

Accordingly, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED**.

In view thereof, no adjustment will be made to the determination of patent term adjustment at the time of the mailing of the notice of allowance.

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

The Office of Data Management has been advised of this decision. The application is thereby forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and if applicable, for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries regarding this matter should be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.

A handwritten signature in dark ink, appearing to read 'Anthony Knight', is written over the printed name.

Anthony Knight
Director
Office of Petitions